

Exhibit 1

FELDESMAN+TUCKER+LEIFER+FIDELL

1129 20th Street, NW
Suite 400
Washington, DC 20036

T. 202.466.8960
F. 202.293.8103
www.ftlf.com

Scott Sheffler ssheffler@ftlf.com

November 29, 2018

[TRANSMITTED VIA ELECTRONIC MAIL TO HHS.ACFO@HHS.GOV]

Ms. Kim Hutchinson
Deputy Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Re: Freedom of Information Act Appeal – Case No. 2018-00981-FOIA-OS

Dear Ms. Hutchinson:

By this letter, Feldesman Tucker Leifer Fidell LLP (“FTLF”) appeals the Department of Health and Human Services’ (“HHS”) October 24, 2018 denial of the above referenced Freedom of Information Act (“FOIA”) request.

On May 11, 2018, FTLF submitted a request for a copy of the HHS Grants Policy Administration Manual (“GPAM”). After considerable delay, on October 24, 2018, HHS denied the request in its entirety, citing FOIA Exemptions 2 and 5 and specifying the deliberative process privilege as its supporting rationale for Exemption 5. Pursuant to 5 U.S.C. § 552(a)(2) and (a)(3), the GPAM must be released unless subject to a FOIA exemption. As explained in detail below, neither Exemption 2 nor 5 applies to the GPAM.

HHS’s continued withholding of the document is unlawful. We hereby respectfully demand that a copy of the GPAM be promptly provided.

I. Procedural Background.

On May 11, 2018, FTLF requested a copy of the GPAM from HHS’s FOIA Office pursuant to 5 U.S.C. § 552 and 45 C.F.R. Part 5. On May 14, 2018, HHS acknowledged its May 11, 2018 receipt of the request. On May 31, 2018, HHS’s twenty-day statutory deadline to respond to the request passed without a determination from the FOIA Office.

Several months after this deadline passed, FTLF made two attempts to contact the FOIA Office regarding the request. First, on October 16, 2018, FTLF emailed Ms. Natasha Taylor to follow up on the request and inquire whether FTLF could do anything to facilitate its processing. Ms. Taylor did not respond. Second, on the evening of October 23, 2018, FTLF emailed Mr. Michael Bell, HHS’s FOIA Public Liaison, and Mr. Michael Marquis, Director of HHS’s FOI/Privacy Acts Division, to insist upon a proper determination.

On October 24, 2018 at 6:35 AM, Ms. Bridget McFarland responded to FTLF's email, stating that "[t]he HHS FOIA Office [had] not yet received any responsive records pertaining to [the] FOIA Request." At 9:57 AM, Ms. Taylor emailed FTLF a denial letter, stating that the GPAM would be withheld in its entirety on the bases of FOIA Exemptions 2 and 5 and specifying the deliberative process privilege as the underlying rationale for assertion of Exemption 5.

The denial appeared rushed and arbitrary. Ms. McFarland had informed FTLF at 6:35 AM on October 24 that the FOIA Office had not yet received a copy of the GPAM for review – a matter that is somewhat surprising for what is presumably readily accessible policy document. Less than four hours later FTLF received the denial letter stating the FOIA Office had conducted a "careful review" of the GPAM's 326 pages. Making it seem even more hurried and less "careful," the file name of denial letter remained "FOIA Denial Response Template."

Copies of all relevant correspondence are attached as Enclosures (1) through (6).

II. The GPAM.

The HHS Office of Grants Policy, Oversight and Evaluation ("OGPOE") is responsible for "developing" and "overseeing the implementation of HHS's financial assistance policies and regulations."¹ It establishes such policy in the form of the GPAM, HHS Grant Policy Statement, and 45 C.F.R. Part 75 (hereinafter "Part 75").²

As explained in Part 75, federal financial assistance is provided by federal agencies such as HHS to non-federal entities, including state and local governments and private organizations, through grants, cooperative agreements, and certain other legal instruments.³ As demonstrated by Part 75 and the HHS Grants Policy Statement, grants and cooperative agreements (commonly referred to collectively as "grants") are subject to myriad compliance requirements and strict federal agency oversight. In fact, many routine business matters, including, but not limited to, the incurrence of certain costs, acquisition and disposal of equipment, certain compensation practices, and certain changes to approved budgets, require the prior approval of a federal awarding agency when the underlying expense or activity is supported by a federal grant.⁴

Part 75 and the HHS Grants Policy Statement, both of which are publicly available, set forth requirements, limitations, and processes relevant HHS management and oversight of grants, as well as myriad grantee obligations.

From at least the early 1990s until recently, the HHS Grants Policy Directives ("GPDs") and Awarding Agency Grants Administrative Manual ("AAGAM") further set HHS policy

¹ OGPOE webpage, <https://www.hhs.gov/about/agencies/asfr/ogapa/grants/ogpoe/index.html>.

² *Id.*

³ 45 C.F.R. § 75.2 (defining "federal financial assistance").

⁴ *See* 45 C.F.R. 75.407.

regarding grant administration. As explained in the 1997 version of the GPDs' introductory chapter, "[t]he directives are the highest level of Departmental grants policy issued within the Department" and "serve as the primary source of Departmental grants policies."⁵ As explained in the 2002 version of the corresponding introductory chapter to the AAGAM, the AAGAM further implemented the GPDs.⁶ Notably, given the role of the GPDs in HHS grant administration, the HHS Departmental Appeals Board (the "DAB") has historically relied on them in evaluating grantee appeals of certain awarding agency actions.⁷

At the end of 2015, the GPDs and AAGAM were replaced by the GPAM. In a 2014 Government Accountability Office ("GAO") report, GAO stated that HHS "was in the process of revising and replacing the [HHS AAGAM] and other guidance related to grants with a new [GPAM]."⁸ Similarly, in a 2017 report, the HHS Office of Inspector General ("OIG") stated that "[o]n December 31, 2015, [HHS] released the [GPAM], which supercede[d] both [the] GPDs and AAGAM[.]"⁹

Beyond (i) its title of "Grants Policy Administration Manual," (ii) the description on the OGPOE website, and (iii) the GAO and OIG acknowledgements referred to above, our understanding that the GPAM is an HHS-wide grant management policy manual is further supported by the following:

- The Administration for Community Living, an HHS operating division, stated in a report to Congress that its National Institute on Disability, Independent Living, and Rehabilitation Research "Program Officers use the HHS [GPAM] to provide consistent oversight across [grant] projects."¹⁰

⁵ GPD Part 1.01 (General – Introduction) (Apr. 17, 1997) (on file with FTLF).

⁶ AAGAM Chpt. 1.01.101 (Introduction) (Mar. 1, 2002) (on file with FTLF).

⁷ See, e.g., *Teaching and Mentoring Communities*, DAB No. 2790 at n. 13 (May 15, 2017) (describing the GPDs as "contain[ing] policies governing the issuance and administration of HHS awards . . ."); *Child Development Council of Acadiana, Inc.*, DAB No. 2574 at 10 (May 27, 2014) (noting that the applicable GPD requires HHS officials to assess retroactive approval requests solely on their merits); *William Smith Sr. Tri-County Child Development Council, Inc.*, DAB No. 2549 at 6 (Dec. 13, 2013) (describing how HHS officials must consider retroactive approval requests); *Recovery Resource Center, Inc.*, DAB No. 2063 at 20 (Jan. 31, 2007) (restating appellant's argument that the applicable GPD requires the HHS funding agency to afford awardees an opportunity to correct any finding of noncompliance); *Kansas Advocacy & Protective Services*, DAB No. 2079 at n. 7 (Apr. 30, 2007) (regarding a DAB order concerning GPD 3.01, which addresses certain employee requirements); *Brown Magnolia Community Development Corporation*, DAB No. 1917 at n. 6 (Apr. 16, 2004) (addressing a grantee's use of property in which the government has an interest).

⁸ GAO, GAO-14-800, HEALTH RESOURCES AND SERVICES ADMINISTRATION: ACTION TAKEN TO TRAIN AND OVERSEE GRANTEE MONITORING STAFF, BUT CERTAIN GUIDANCE COULD BE IMPROVED at 7, n. 16 (Sept. 2014), <https://www.gao.gov/assets/670/666032.pdf>.

⁹ HHS OIG, A-02-14-02024, NEWARK PRESCHOOL COUNCIL, INC., DID NOT ALWAYS COMPLY WITH HEAD START REQUIREMENTS, at n. 19 (Feb. 2017).

¹⁰ Administration for Community Living, NATIONAL INSTITUTE ON DISABILITY, INDEPENDENT LIVING, AND REHABILITATION RESEARCH (NIDILRR): 2015 REPORT TO CONGRESS at 9 (last accessed Nov. 25, 2018), <https://acl.gov/sites/default/files/about-acl/2017-03/FY%202015%20NIDILRR%20Report.pdf>.

- In comments within a 2016 GAO report on grant closeout timeliness, HHS acknowledged that it would “implement strategies to address and reduce grant closeout delays and further enhance compliance with HHS’s [GPAM].”¹¹
- In 2017, HHS issued two separate Federal Register notices that reference the GPAM in the context of the GPAM setting HHS grant management requirements.¹²

III. FOIA Disclosure Requirements.

a. Obligation to Disclose.

Subject only to certain enumerated exemptions, the FOIA statute requires that (i) “statements of general policy or interpretations of general applicability formulated and adopted by the agency” be published in the Federal Register;¹³ (ii) “those statements of policy and interpretations which have been adopted by the agency [but] not published in the Federal Register” be made “available for public inspection in an electronic format;”¹⁴ and (iii) all other records be made available upon request.¹⁵

The GPAM is a statement of policy that the FOIA statute requires be made available for public inspection in electronic format, if not actually published in the Federal Register. Regardless, as FTLF has specifically requested a copy of the GPAM, it must be provided unless exempt from disclosure under one of the FOIA statute’s enumerated exemptions.

b. Cited Exemptions.

In the denial letter, HHS cited Exemptions 2 and 5 as grounds for withholding the GPAM, and further explained that the deliberative process privilege provided the basis for assertion of Exemption 5.

For the reasons explained below, neither Exemption 2 nor 5 is applicable to the GPAM.

¹¹ GAO, GAO-16-362, GRANTS MANAGEMENT: ACTION NEEDED TO ADDRESS PERSISTENT GRANT CLOSEOUT TIMELINESS AND UNDISBURSED BUSINESS ISSUES at 62-63 (Apr. 2016), <https://www.gao.gov/assets/680/677667.pdf>.

¹² See 82 Fed. Reg. 8191, 8192 (Jan. 24, 2017) (stating that certain grantees’ annual reports “will be used to . . . respond to [HHS’s GPAM] requirements”) and 82 Fed. Reg. 19246, 18247 (Apr. 26, 2017) (“However, the HHS [GPAM] and [GPS] provide that the indirect cost rate for training grants is capped at eight percent.”).

¹³ 5 U.S.C. § 552(a)(1).

¹⁴ § 552(a)(2).

¹⁵ § 552(a)(3).

i. FOIA Exemption 2.

Exemption 2 is very limited in scope. It allows federal agencies to withhold documents “related solely to the internal personnel rules and practices of an agency.” 5 U.S.C. § 552(b)(2).

In 2011, in *Milner v. Dep’t of the Navy*,¹⁶ the Supreme Court explained that Exemption 2 is constrained to its explicit text.¹⁷ In the wake of *Milner*, the only records that may be withheld under Exemption 2 are those records that relate solely to a “practice/rule . . . about personnel,”¹⁸ *i.e.*, “rules and practices dealing with employee relations or human resources.”¹⁹

The GPAM is an HHS-wide grants management policy. It is not a personnel policy, and therefore cannot be withheld on the basis of Exemption 2.

ii. FOIA Exemption 5 – Deliberative Process Privilege.

The purposes of the deliberative process privilege are to (i) foster internal agency dialogue on matters of proposed or potential agency action and policy, (ii) to avoid “premature disclosure of proposed policies before they have been finally formulated or formally adopted,” and (iii) to avoid public confusion that might result from “dissemination of documents suggesting reasons and rationales for a course of action which were not in fact the ultimate reasons for an agency’s action.”²⁰ As such, application of the privilege is limited exclusively to documents that are *both* predecisional and deliberative.²¹

A document is predecisional if “it was generated before the adoption of an agency policy.”²² A document is deliberative if “it reflects the give-and-take of the consultative

¹⁶ 562 U.S. 562 (2011).

¹⁷ *Id.* at 579-81. In so holding, the Supreme Court overturned decades of contrary guidance that permitted a broader construction of Exemption 2, including prior case law within the D.C. Circuit distinguishing between concepts of “low 2” (“trivial administrative matters of no genuine public interest”) and “high 2” (“internal materials [for which] ‘disclosure significantly risks circumvention of agency regulations or statutes’”). *Public Citizen, Inc. v. Office of Management and Budget*, 598 F.3d 865 (D.C. Cir. 2010) (quoting *Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 670 F.2d 1051, 1074 (D.C. Cir. 1981) and *Stolt-Nielsen Trasp. Group Ltd. v. United States*, 534 F.3d 728, 732 (D.C. Cir. 2008)). We note that even under such prior precedent, neither “high 2” nor “low 2” would have supported withholding a document such as the GPAM.

¹⁸ *Milner* at 578 (original emphasis).

¹⁹ *Id.* at 570; *See also* DEP’T OF JUSTICE GUIDE TO THE FREEDOM OF INFORMATION ACT: EXEMPTION 2, at 13 (posted Mar. 5, 2013) (citing *Milner*, 562 U.S. at 570-71 and n.4); *Pub. Employees for Envtl. Responsibility v. U.S. Section, Int’l Boundary & Water Comm’n, U.S.-Mexico*, 740 F.3d 195, 198 (D.C. Cir. 2014) (acknowledging *Milner*’s limitation of Exemption 2).

²⁰ *Coastal States Gas Corp. v. Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980).

²¹ *Id.*; *See also Tax Analysts v. Internal Revenue Service*, 117 F.3d 607, 616 (D.C. Cir. 1997); *Public Citizen* at 876; *Judicial Watch, Inc. v. U.S. Dep’t of Defense*, 847 F.3d 735, 739 (D.C. Cir. 2017).

²² *Coastal States* at 866; *Judicial Watch* at 739.

process.”²³ Types of documents potentially covered by this privilege include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policies of the agency.”²⁴

The GPAM *is* the formal expression of final HHS policy. As such, it is neither predecisional nor deliberative in nature.

To the extent the GPAM may itself serve as a policy guide in making future decisions, the Court of Appeals for the District of Columbia has clearly instructed that “an agency’s application of a policy to guide further decision-making does not render the policy itself predecisional.”²⁵ In fact, both the Supreme Court of the United States and the Court of Appeals for the D.C. Circuit have consistently held that documents that constitute the “working law” of an agency are not subject to the deliberative process privilege.²⁶ As explained by the Supreme Court in *National Labor Relations Board v. Sears, Roebuck & Co.*:

Exemption 5, properly construed, calls for disclosure of all opinions and interpretations which embody the agency’s effective law and policy, and the withholding of all papers which reflect the agency’s group thinking in the process of working out its policy and determining what its law shall be.²⁷

As further explained by the Court of Appeals for the D.C. Circuit in *Coastal States Gas Corp. v. Dep’t of Energy*,²⁸ agencies are not permitted to develop a body of “secret law” that is hidden from public view:

A strong theme of our opinions [on the deliberative process privilege] has been that an agency will not be permitted to develop a body of “secret law,” used by it in the discharge of its regulatory duties and in its dealings with the public, but hidden behind a veil of privilege because it is not designated as “formal,” “binding,” or “final.” The theme was sounded as early as 1971 when the court emphatically stated that agencies would be required to disclose “orders and interpretations which it actually applies to cases before it,” in order to prevent the development of “secret law.”²⁹

The GPAM is a final official statement of HHS policy. As such, the deliberative process privilege does not, and cannot, exempt it from disclosure. The unlawful withholding of the

²³ *Id.*

²⁴ *Id.*

²⁵ *Public Citizen* at 875.

²⁶ *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 153 (1975); *Electronic Frontier Foundation v. U.S. Dep’t of Justice*, 739 F.3d 1, 9 (D.C. Cir. 2014)

²⁷ *National Labor Relations Board* at 153 (internal quotations omitted).

²⁸ *Coastal States* supra note 20.

²⁹ *Id.* at 865 (quoting *Sterling Drug, Inc. v. FTC*, 450 F.2d 698, 708 (D.C. Cir. 1971)).

Feldesman Tucker Leifer Fidell LLP
Appeal of FOIA Case No. 2018-00981-FOIA-OS
Page 7 of 7

GPAM furthers no apparent purpose except the establishment of “secret law” within HHS that will be applied to decisions directly affecting state, local, and private party grant recipients.³⁰

IV. Conclusion and Requested Relief.

FOIA was “[e]nacted ‘to pierce the veil of administrative secrecy and to open agency action to the light of public scrutiny.’”³¹ It permits agencies to withhold records only when one of the express statutory exemptions applies, and the exemptions are to be construed narrowly.³²

Neither Exemption 2 nor Exemption 5 shields the GPAM from disclosure. As such, FTLF respectfully demands that HHS (i) rescind its October 24, 2018 denial letter and (ii) promptly provide FTLF with a copy of the GPAM.

Sincerely,



Scott S. Sheffler
Partner
Feldesman Tucker Leifer Fidell LLP

Enclosures

³⁰ See discussion of the DAB’s use of the GPDs *supra* p.3 and footnote 7.

³¹ *Public Citizen* at 869 (D.C. Cir. 2010) (quoting *Dep’t of Air Force v. Rose*, 425 U.S. 352, 360-61 (1976)).

³² *Id.* (citing *Rose*, 425 U.S. at 361).

Enclosure 1

Sheffler, Scott

From: Kim, Jenny
Sent: Friday, May 11, 2018 9:44 AM
To: 'FOIARequest@hhs.gov'
Cc: 'Lakisa.Carter@hhs.gov'; Sheffler, Scott
Subject: FOIA Request Letter
Attachments: FOIA Request Letter (5.11.2018).pdf

Good morning Mr. Marquis,

On behalf of Scott Sheffler, I am attaching the FOIA request letter.

Sincerely,
Jenny

Jenny Kim

Legal Assistant
Feldesman Tucker Leifer Fidell LLP
1129 20th Street, NW, Suite 400
Washington, DC 20036
T. 202.466.8960
F. 202.293.8103

www.ftlf.com

FELDESMAN+TUCKER+LEIFER+FIDELL

CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the law firm of Feldesman Tucker Leifer Fidell LLP and are intended solely for the use of the named recipient(s). This e-mail may contain privileged attorney-client communications or work product. Any dissemination by anyone other than an intended recipient is prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you have received this e-mail in error, notify JKim@feldesmantucker.com immediately and delete the e-mail, any attachments, and all copies from any drives or storage media and destroy any printouts.

FELDESMAN+TUCKER+LEIFER+FIDELL

1129 20th Street, NW
Suite 400
Washington, DC 20036

T. 202.466.8960
F. 202.293.8103
www.ftlf.com

Scott Sheffler SSheffler@ftlf.com

May 11, 2018

TRANSMITTED VIA EMAIL (FOIARequest@hhs.gov)

Michael Marquis, FOIA Officer
U.S. Department of Health and Human Services
Hubert H. Humphrey Building, Room 729H
200 Independence Avenue, S.W.
Washington D.C. 20201.

Re: FREEDOM OF INFORMATION ACT REQUEST

Dear Mr. Marquis:

Please accept this request for information pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as implemented by the Department of Health and Human Services ("HHS") at 45 C.F.R. Part 5.

Please provide a copy of HHS's Grants Policy Administration Manual ("GPAM"), as referenced on the Office of Grants Policy, Oversight and Evaluation's website (<https://www.hhs.gov/about/agencies/asfr/ogapa/grants/ogpoe/index.html>).

For purposes of this request, please construe the term "HHS" to include all departments and divisions thereof, including but not limited to the Office of Grants and Acquisition Policy and Accountability and its subordinate offices.

Please confirm receipt of this FOIA request, and please do not hesitate to reach out with any questions. I may be reached anytime at ssheffler@ftlf.com or by phone at (202) 466-8960.

Respectfully submitted,



Scott S. Sheffler
Partner

Copy to:

Lakisa Carter, Senior Policy Analyst, Office of Grants Policy, Oversight and Evaluation
(Lakisa.Carter@hhs.gov)

Enclosure 2

Sheffler, Scott

From: natasha.taylor@hhs.gov
Sent: Monday, May 14, 2018 10:18 AM
To: Sheffler, Scott
Cc: Kim, Jenny
Subject: HHS FOIA Request 2018-00981-FOIA-OS
Attachments: HHS FOIA Request -Acknowledgement Letter.pdf

RE: **2018-00981-FOIA-OS**

Dear Mr. Sheffler:

This is in response to your Freedom of Information Act (FOIA) request, dated: **May 11, 2018**.

We received your request on **May 11, 2018** and have begun processing your request. Please see attached for additional information.

Sincerely,

Natasha Taylor
Government Information Specialist
Main Office Line: 202-690-7453



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201Refer to: Request Number **2018-00981-FOIA-OS****May 14, 2018**

Scott S. Sheffler
Attorney
FELDESMAN + TUCKER + LEIFER + FIDELL
1129 20th Street, NW, Ste. 400
Washington, DC 20036
Via email: ssheffler@ftlf.com

Dear Mr. Sheffler:

This acknowledges receipt of your May 11, 2018, Freedom of Information Act (FOIA) request, submitted to the Department of Health and Human Services (HHS), FOI/Privacy Acts Division. Specifically, you requested:

“... a copy of HHS's Grants Policy Administration Manual ("GPAM"), as referenced on the Office of Grants Policy, Oversight and Evaluation's website (<https://www.hhs.gov/about/agencies/asfr/ogapa/grants/ogpoe/index.html>).”

We received your request on **May 11, 2018**.

We have initiated a search to locate records falling within the scope of your request. If our searching units advise us that you have requested a voluminous amount of records that require extensive search and examination, my staff will contact you shortly to discuss your willingness to modify your request.

The FOIA requires that we respond to your request within 20 working days of its receipt in this office. Please note the following unusual and exceptional circumstances that will impact our response time: (1) we will need to search for and collect records from components and/or field offices external to this office; and (2) because we receive a very heavy volume of FOIA requests, we will process your request in line with our established policy of "first in, first out" case processing. If either of these circumstances prevents our office from responding within the 20 working day timeframe, we will utilize a 10 working day extension to process your request, as permitted pursuant to the FOIA. This policy is consistent with court decisions regarding FOIA's time limits.

The law authorizes us to collect fees for responding to FOIA requests and assume that you are willing to pay any applicable fees for processing this request unless you have stated otherwise. If at any time the fee for processing your request is estimated to exceed \$250.00, we will send you an invoice for the estimated fee and suspend further processing until payment of the invoiced amount is received. If the estimated processing fee does not exceed \$250.00, we will send you an invoice for the actual fee with our response.

Please note the following:

If you believe that we should expedite the processing of your request because the requested records are needed in light of a compelling need; i.e., an imminent threat to the life and safety of an individual; an urgency to inform the public concerning government activity (provided you are a member of the media); a deadline in litigation; a deadline for commenting on proposed regulations; or other urgent matters, you must ask for expedited processing in writing and provide to this office as much relevant information as possible. In line with 5 U.S.C. § 552(a)(6)(E)(vi), you must demonstrate the compelling need in a statement certified to be true and correct to the best of your knowledge and belief. Attach any supporting documentation to your statement, including a court scheduling order if your request is based upon a litigation deadline. (Fax supporting documentation to the FOIA/PA Division at (202) 690-8320).

ENCLOSURE (2)

If your request seeks a waiver or reduction of the fees that we would customarily charge for furnishing agency records and your request does not contain sufficient information to enable us to determine whether a waiver or reduction of fees is warranted, you should provide such information to this office within 10 working days of receipt of this letter. In line with 45 C.F.R. § 5.45, such information must include a detailed explanation of how disclosure to you: (1) is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) is not primarily in the commercial interest of the requester. I especially need to know how you intend to disseminate the information to the public.

When submitting this additional information, please refer to the case number listed at the top left-hand corner of this letter, and send it to:

FOI/Privacy Acts Division
U.S. Department of Health and Human Services
200 Independence Avenue S.W.
Room 729H
Washington, DC 20201

If you are not satisfied with any aspect of the processing and handling of this request, you have the right to seek dispute resolution services from:

Michael Bell
HHS FOIA Public Liaison
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Telephone: (202) 260-0793
E-mail: HHS_FOIA_Public_Liaison@hhs.gov

and/or:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road – OGIS
College Park, MD 20740-6001

Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov
Fax: 202-741-5769

Any questions regarding the status of this request should be directed to our office at 202-690-7453.

Sincerely yours,

Michael Bell
For

Michael S. Marquis
Director
FOI/Privacy Acts Division

ENCLOSURE (2)

Enclosure 3

Sheffler, Scott

From: Sheffler, Scott
Sent: Tuesday, October 16, 2018 8:32 AM
To: 'natasha.taylor@hhs.gov'
Cc: Kim, Jenny
Subject: RE: HHS FOIA Request 2018-00981-FOIA-OS
Attachments: FOIA Request Letter (5.11.2018).pdf; HHS FOIA Request -Acknowledgement Letter.pdf

Ms. Taylor,

I am writing to follow up on my attached FOIA request from May 11, 2018 for a copy of the HHS Grants Policy Administration Manual (GPAM), a public document. My request was submitted in May, and the GPAM should require no redactions, nor should there be any other reason for delay in its production. We are, of course, months beyond the statutory and regulatory FOIA timelines, and I'm very interested in receiving a copy of this public directive.

I understand your office may be busy. Is there anything I can do to facilitate the processing of this request?

Best regards,
Scott

Scott Sheffler

Partner
Feldesman Tucker Leifer Fidell LLP
1129 20th Street, NW, Suite 400
Washington, DC 20036
T. 202.466.8960
F. 202.293.8103

www.ftlf.com

FELDESMAN+TUCKER+LEIFER+FIDELL

CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the law firm of Feldesman Tucker Leifer Fidell LLP and are intended solely for the use of the named recipient(s). This e-mail may contain privileged attorney-client communications or work product. Any dissemination by anyone other than an intended recipient is prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you have received this e-mail in error, notify sSheffler@ftlf.com immediately and delete the e-mail, any attachments, and all copies from any drives or storage media and destroy any printouts.

From: natasha.taylor@hhs.gov <natasha.taylor@hhs.gov>
Sent: Monday, May 14, 2018 10:18 AM
To: Sheffler, Scott <sSheffler@ftlf.com>
Cc: Kim, Jenny <JKim@feldesmantucker.com>
Subject: HHS FOIA Request 2018-00981-FOIA-OS

RE: 2018-00981-FOIA-OS

Dear Mr. Sheffler:

This is in response to your Freedom of Information Act (FOIA) request, dated: **May 11, 2018**.

We received your request on **May 11, 2018** and have begun processing your request. Please see attached for additional information.

Sincerely,

Natasha Taylor
Government Information Specialist
Main Office Line: 202-690-7453

Enclosure 4

Sheffler, Scott

From: Sheffler, Scott
Sent: Tuesday, October 23, 2018 11:36 PM
To: 'HHS_FOIA_Public_Liaison@hhs.gov'
Cc: 'FOIARequest@hhs.gov'; 'natasha.taylor@hhs.gov'
Subject: HHS FOIA Request 2018-00981-FOIA-OS
Attachments: RE: HHS FOIA Request 2018-00981-FOIA-OS

Mr. Bell and Mr. Marquis,

I am writing to follow up on the attached FOIA request. I have received no reply regarding this request since May 14, 2018. As you will see from the attached, I reached out to Ms. Natasha Taylor by email on October 16, 2018 (last Tuesday). I have received no reply to that communication.

I respectfully request that you produce the requested document (the HHS Grants Policy Administration Manual ("GPAM")). We are well beyond the statutory period within which a determination is required. Moreover, this document is of a type that it should be publicly available on the HHS website under 5 USC § 552(a)(1).

I do appreciate that your office may be quite busy, but I must respectfully insist upon a prompt determination.

Kind regards,
Scott

Scott Sheffler

Partner
Feldesman Tucker Leifer Fidell LLP
1129 20th Street, NW, Suite 400
Washington, DC 20036
T. 202.466.8960
F. 202.293.8103

www.ftlf.com

FELDESMAN+TUCKER+LEIFER+FIDELL

CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the law firm of Feldesman Tucker Leifer Fidell LLP and are intended solely for the use of the named recipient(s). This e-mail may contain privileged attorney-client communications or work product. Any dissemination by anyone other than an intended recipient is prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you have received this e-mail in error, notify sSheffler@ftlf.com immediately and delete the e-mail, any attachments, and all copies from any drives or storage media and destroy any printouts.

Enclosure 5

Sheffler, Scott

From: OS FOIA Request (HHS/ASPA) <FOIARequest@hhs.gov>
Sent: Wednesday, October 24, 2018 6:35 AM
To: Sheffler, Scott
Subject: RE: HHS FOIA Request 2018-00981-FOIA-OS

Good morning and thank you for your email. The HHS FOIA office has not yet received any responsive records pertaining to your FOIA request. I have reached out to the appropriate program office to ascertain an estimated date of completion for the records search. I do apologize for the delay and hope to have an update soon.

Sincerely,
Bridget McFarland

From: Sheffler, Scott <sSheffler@ftlf.com>
Sent: Tuesday, October 23, 2018 11:36 PM
To: HHS FOIA Public Liaison (OS/ASPA) <HHS_FOIA_Public_Liaison@hhs.gov>
Cc: OS FOIA Request (HHS/ASPA) <FOIARequest@hhs.gov>; Taylor, Natasha (OS/ASPA) <Natasha.Taylor@hhs.gov>
Subject: HHS FOIA Request 2018-00981-FOIA-OS

Mr. Bell and Mr. Marquis,

I am writing to follow up on the attached FOIA request. I have received no reply regarding this request since May 14, 2018. As you will see from the attached, I reached out to Ms. Natasha Taylor by email on October 16, 2018 (last Tuesday). I have received no reply to that communication.

I respectfully request that you produce the requested document (the HHS Grants Policy Administration Manual ("GPAM")). We are well beyond the statutory period within which a determination is required. Moreover, this document is of a type that it should be publicly available on the HHS website under 5 USC § 552(a)(1).

I do appreciate that your office may be quite busy, but I must respectfully insist upon a prompt determination.

Kind regards,
Scott

Scott Sheffler

Partner
Feldesman Tucker Leifer Fidell LLP
1129 20th Street, NW, Suite 400
Washington, DC 20036
T. 202.466.8960
F. 202.293.8103

www.ftlf.com

FELDESMAN+TUCKER+LEIFER+FIDELL

CONFIDENTIALITY NOTICE: This e-mail and any attachments contain information from the law firm of Feldesman Tucker Leifer Fidell LLP and are intended solely for the use of the named recipient(s). This e-mail may contain privileged attorney-client communications or work product. Any

dissemination by anyone other than an intended recipient is prohibited. If you are not a named recipient, you are prohibited from any further viewing of the e-mail or any attachments or from making any use of the e-mail or attachments. If you have received this e-mail in error, notify sSheffler@ftlf.com immediately and delete the e-mail, any attachments, and all copies from any drives or storage media and destroy any printouts.

Enclosure 6

Sheffler, Scott

From: Taylor, Natasha <FOIAREQUEST@HHS.GOV>
Sent: Wednesday, October 24, 2018 9:11 AM
To: Sheffler, Scott
Subject: FOIA Request # 2018-00981-FOIA-OS
Attachments: FOIA Denial Response Template.pdf

RE: FOIA Request # **2018-00981-FOIA-OS**

October 24, 2018

Dear Mr. Sheffler,

This is the final determination regarding your May 11, 2018 Freedom of Information Act request. Thank you and best regards.

Sincerely,

Natasha Taylor
Government Information Specialist



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Assistant Secretary for Public Affairs
Washington, D.C. 20201

Case No. 2018-00981-FOIA-OS

October 24, 2018

Scott S. Sheffler
Partner
Feldesman + Tucker + Leifer + Fidell
1129 20th Street, NW, Ste. 400
Washington, DC 20036
Via email: ssheffler@ftlf.com

Dear Mr. Sheffler:

This letter is the final response to your May 11, 2018, Freedom of Information Act (FOIA) request. Specifically, you requested the following records: "... a copy of HHS's Grants Policy Administration Manual ("GPAM"), as referenced on the Office of Grants Policy, Oversight and Evaluation's website <https://w.w.w.hhs.gov/about/agencies/asfr/ogapa/grants/ogpoe/index.html>).".

A representative from the office of the Assistant Secretary for Financial Resources (ASFR) conducted a search and located **326 pages** of responsive records. After a careful review of these pages, I have determined to withhold them in their entirety, pursuant to Exemptions 2 and 5 of the FOIA (5 U.S.C. §552 (b)(2),(b)(5)).

FOIA exemption (b)(2) permits the withholding of records that are related solely to the internal personnel rules and practices of an agency.

FOIA exemption (b)(5) protects inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency. This exemption protects documents that would be covered by any privilege an agency could assert in a civil proceeding. These privileges include, among others, the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege. In this instance, the deliberative process privilege applies.

If you believe that the information withheld should not be exempt from disclosure, or this response constitutes an adverse determination, you may appeal. By filing an appeal, you preserve your rights under FOIA and give the agency a chance to review and reconsider your request and the agency's decision.

Your appeal must be mailed within 90 days from the date of receipt of this letter, to:

Ms. Kim Hutchinson
Deputy Agency Chief FOIA Officer
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

ENCLOSURE (6)

Please clearly mark both the envelope and your letter “Freedom of Information Act Appeal.”
You may also e-mail your appeal to: HHS.ACFO@hhs.gov.

If you would like to discuss our response before filing an appeal to attempt to resolve your dispute without going through the appeals process, you may contact the HHS FOIA Public Liaison for assistance at:

Michael Bell
HHS FOIA Public Liaison
U.S. Department of Health and Human Services
Office of the Assistant Secretary for Public Affairs
Room 729H
200 Independence Avenue, S.W.
Washington, DC 20201

Telephone: (202) 260-0793
E-mail: HHS_FOIA_Public_Liaison@hhs.gov

If you are unable to resolve your FOIA dispute through our FOIA Public Liaison, the Office of Government Information Services (OGIS), the Federal FOIA Ombudsman’s office, offers mediation services to help resolve disputes between FOIA requesters and Federal agencies. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road–OGIS
College Park, MD 20740-6001

Telephone: 202-741-5770
Toll-Free: 1-877-684-6448
E-mail: ogis@nara.gov
Fax: 202-741-5769

There are no charges in this instance because the billable costs are less than our threshold of \$25.

Sincerely yours,



For

Michael S. Marquis
Director
FOI/Privacy Acts Division

Enclosure(s)